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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. JESUS LARA GONZALEZ, Defendant and Appellant.	E058447 (Super.Ct.No. RIF1103709) OPINION

APPEAL from the Superior Court of Riverside County. Bernard Schwartz, Judge. Modified and affirmed with directions.

Rodger P. Curnow, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, and Charles C. Ragland and Kathryn Kirschbaum, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Jesus Lara Gonzalez was accused of, among other things, conspiring with codefendant Byron E. Wright to steal and sell various construction

vehicles and equipment. It was initially planned that the charges against defendant and Mr. Wright would be tried in the same proceeding, with a separate jury panel for each. After the beginning of trial, however, the court declared a mistrial with respect to Mr. Wright, who was medically unable to continue with the trial. Trial proceeded with respect to defendant.

The jury found defendant guilty of two counts of unlawfully taking or driving a vehicle (Veh. Code, § 10851, subd. (a); counts 5 and 7), two counts of unauthorized computer access to obtain property (Pen. Code, § 502, subd. (c)(1); counts 19 and 20), one count of transporting methamphetamine (Health & Saf. Code, § 11379, subd. (a); count 21), and one count of conspiracy to commit grand theft (Pen. Code, § 182, subd. (a)(1); count 22), and found true 22 of 27 charged overt acts in furtherance of the conspiracy. Two counts of receiving a stolen vehicle (Pen. Code, § 496d, subd. (a) (counts 4 and 6)), charged in the alternative to counts 5 and 7, were dismissed on the People's motion.[1]

In a bifurcated proceeding following the jury trial, defendant admitted five of six alleged prison priors (Pen. Code, § 667.5, subd. (b)) and one prior strike (Pen. Code, §§ 667, subds. (c) & (e), 1170.12, subd. (c)(1)); the court dismissed the remaining prison prior. With respect to count 21, the court found true an enhancement for a prior felony violation within the meaning of Health and Safety Code section 11370.2, subdivision (c).

[1] Defendant and Mr. Wright were both charged with counts 4, 6, and 22. Defendant alone was charged with counts 5, 7, 19, 20, and 21. The remaining charges—counts 1 through 3 and 8 through 18, all for receipt of a stolen vehicle (§ 496d, subd. (a))—were against Mr. Wright alone.

The court also found true that defendant had committed a felony while released on bail, in violation of Penal Code section 12022.1.

The court sentenced defendant to state prison for an aggregate term of 20 years eight months, as follows: six years with respect to count 21; 16 months each for counts 5, 7, 19, 20, and 22; three years for the Health and Safety Code section 11370.2 enhancement, two years pursuant to Penal Code section 12022.1, and a one-year sentence for each of three of the prison priors. The court imposed and stayed one-year sentences with respect to the two other prison priors, noting that one of them was the strike offense, and the other was used to qualify defendant for the enhancement pursuant to Health and Safety Code section 11370.2, and declining to impose any additional punishment on that basis.

On appeal, defendant contends all his convictions should be reversed because: (1) the trial court erroneously denied his motion for a continuance of trial to retain private counsel; (2) the court should have declared a mistrial as to defendant, too, when it did so as to Mr. Wright; and (3) the court allowed introduction of improper opinion testimony of a police officer regarding defendant's guilt. Additionally, defendant contends his convictions on counts 19 and 20 for unauthorized computer access to obtain property are not supported by substantial evidence. With respect to sentencing, defendant and the People agree that the sentences for counts 19 and 20 should have been stayed pursuant to Penal Code section 654, and that the two prison priors for which the court imposed stayed

sentences should instead have been stricken.[2] Finally, defendant contends that the matter must be remanded to the trial court for recalculation of his presentence custody credits.

We agree that the sentences for counts 19 and 20 should have been stayed pursuant to Penal Code section 654, and the court should have instead stricken the two prison priors for which it imposed stayed sentences. We affirm the judgment in all other respects.

I. FACTUAL AND PROCEDURAL BACKGROUND

The prosecution contended that defendant, together with Mr. Wright, engaged in a conspiracy to steal and sell vehicles and property from construction sites between February and April 2011. Defendant was alleged to have personally stolen two vehicles and to have conspired with Mr. Wright with respect to the theft of at least 11 more, plus various pieces of construction equipment.[3]

On July 5, 2011, at the request of the California Highway Patrol, whose investigation of the vehicle thefts had led it to suspect defendant and Mr. Wright, the Riverside County Sherriff's Department initiated a traffic stop of a vehicle in which defendant was the only rear seat passenger. A search of the vehicle revealed a small baggie of methamphetamine on the rear floorboard, behind the front passenger seat.

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[2] Defendant has withdrawn a claim of error with respect to the sentence for count 22.

[3] The prosecution charged Mr. Wright with theft of a 14th vehicle, referred to as "vehicle 3" below, but conceded at trial that it did not have sufficient evidence to tie defendant to that theft.

At a December 20, 2012, hearing, in advance of the trial of defendant and Mr. Wright scheduled to begin December 26, 2012, defendant requested a continuance to allow time for him to hire private counsel. The court denied the motion as "untimely."

Two juries were chosen, one for defendant and one for Mr. Wright, in the anticipation that there would be a joint trial. After opening statements, however, counsel for Mr. Wright informed the court that Mr. Wright's doctor believed the anticipated four-week trial could be life threatening for him due to his poor health. Mr. Wright did not return to the courtroom that day after the lunch recess due to his medical condition. The next day, Wright's doctor called the court to say that Mr. Wright's health had taken a turn for the worse, that he required bed rest, and that he was physically incapable of enduring trial, at least until there was some improvement in his condition. The parties and the court agreed to present evidence to defendant's jury only, pending a reevaluation of Mr. Wright's status. On several more occasions, however, Mr. Wright was medically unable to be present for trial. The trial court therefore declared a mistrial with respect to Mr. Wright, finding no reasonable probability that the trial could be concluded as to him. The court denied defendant's request that a mistrial be declared with respect to him, as well.

The prosecution's evidence that defendant personally stole two vehicles included surveillance video depicting the theft by someone the prosecution contended to be defendant, together with a female accomplice. Defendant's charges for unauthorized computer access to obtain property relate to the alleged unauthorized use of an access code to open the gate to enter the storage facility where those two thefts occurred.

Defendant was tied to the other thefts by telephone records showing over 100 telephone calls between defendant and Mr. Wright corresponding to the dates and times of the thefts. Nevertheless, in an interview following his arrest in July 2011, defendant initially denied knowing Mr. Wright. Shortly thereafter, he admitted to "barely" knowing Mr. Wright from a long time ago, but claimed it had been nearly a year since he had talked to him. When shown the telephone records demonstrating the numerous recent telephone contacts between defendant and Mr. Wright, defendant responded "What do you want me to tell you, man?" and continued to deny any involvement in the thefts.

On February 1, 2013, the jury returned its verdicts, described above. The trial court made its findings with respect to the various charged enhancements and imposed sentence on February 28, 2013.[4]

II. DISCUSSION

A. Denial of Motion for Continuance Was Not an Abuse of Discretion.

Defendant contends the trial court's denial of his request for a continuance to seek private counsel violated his right to counsel under the United States and California Constitutions. We disagree.

A defendant's constitutional right to effective assistance of counsel includes his or her right to retain counsel of choice. Nonetheless, the right to choose must be balanced carefully "'against other values of substantial importance, such as that seeking to ensure orderly and expeditious judicial administration, with a view toward accommodation

[4] Additional details are discussed below as needed to address defendant's claims of error.

reasonable under the facts of the particular case.'" (*People v. Courts* (1985) 37 Cal.3d 784, 790 (*Courts*).) "A continuance may be denied if the accused is 'unjustifiably dilatory' in obtaining counsel, or 'if he arbitrarily chooses to substitute counsel at the time of trial.'" (*Id.* at pp. 790-791.)

We review the trial court's denial of defendant's request for a continuance to seek private counsel for abuse of discretion. (*People v. Pigage* (2003) 112 Cal.App.4th 1359, 1367.) Appellate courts reviewing such denials look to the circumstances of each case, and particularly the reasons presented to the trial court by the defendant. (*Courts*, *supra*, 37 Cal.3d at p. 791.) Circumstances where the continuance request is "premised on the accused's representation that he would *eventually* be able to hire counsel of his own choosing," or where "participation by a particular private attorney was still quite speculative at the time the motion for continuance was made" are "to be sharply contrasted" with circumstances where private counsel has been found and retained, or at least good faith, diligent efforts to do so can be shown. (*Id.* at pp. 791-792 & fn. 3, original italics.)

Defendant made his motion for counsel six days before the scheduled start of trial, at least arguably taking his motion out of the realm of authority dealing with "eve-of-trial, day-of-trial, and second-day-of-trial requests." (*Courts*, *supra*, 37 Cal.3d at p. 792, fn, 4.) But he made no showing that a retainer agreement with any particular counsel had been concluded or was imminent. (Cf. *id*. at p. 792 [finding motion made more than a week before trial "at a time when it appeared that a retainer arrangement was imminent" to be timely].) To the contrary, defendant apparently engaged in no effort, diligent or

otherwise, to hire counsel of his choosing at any time between his arrest in July 2011 and the time of his motion in December 2012. He made no showing to the trial court that he would eventually be able to hire private counsel, or that he had begun the process of searching for a particular counsel whom he might wish to hire. Indeed, he presented *no* reasons why the motion should be granted: the record reveals only a bare request, relayed to the court by appointed counsel, who apparently had no previous indication that defendant was contemplating such a request, in the middle of a hearing on other matters. After denying the request, the court invited defendant to "discuss any issues" with the trial judge, but defendant never renewed his request, and the record reveals no indication he ever attempted to arrange for private counsel. Moreover, defendant first requested a continuance immediately after the case had been sent out for trial, and just after various logistical issues were resolved on the basis that the trial would commence on December 26, 2012.

It may be inferred from the above circumstances that defendant's request for a continuance to obtain private counsel was unjustifiably dilatory and arbitrarily made, if not quite on the eve of trial, then at least so close to trial as to unreasonably interfere with the orderly administration of justice. We find neither abuse of discretion nor violation of defendant's rights in the denial of his request.

B. Denial of Motion for Mistrial Was Not an Abuse of Discretion.

Defendant argues that the trial court erred by refusing to declare a mistrial as to defendant, too, when it declared a mistrial as to Mr. Wright. Defendant perceives unfair prejudice in the circumstance that the jury heard evidence of vehicle and equipment thefts

that defendant had "nothing" to do with, even though Mr. Wright was no longer a part of the trial, and complains that defendant "was smeared with the taint of wrongdoing attributable to Wright." We find no error with respect to the denial of defendant's request.

"'A mistrial should be granted if the court is apprised of prejudice that it judges incurable by admonition or instruction. [Citation.] Whether a particular incident is incurably prejudicial is by its nature a speculative matter, and the trial court is vested with considerable discretion in ruling on mistrial motions. [Citation.]' [Citation.] A motion for mistrial should be granted when '"'a [defendant's] chances of receiving a fair trial have been irreparably damaged.'"' [Citation.]" (*People v. Collins* (2010) 49 Cal.4th 175, 198-199.) We review the denial of a motion for mistrial under the deferential abuse of discretion standard. (*People v. Cox* (2003) 30 Cal.4th 916, 953, overruled in part on other grounds in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.)

Defendant's argument that he too should have been granted a mistrial suffers from several fatal flaws. First, the premise that evidence was presented to defendant's jury of thefts he had "nothing" to do with is false. The prosecution presented evidence of certain thefts that defendant did not personally commit. But defendant was tied to those thefts by over 100 telephone calls between Mr. Wright and defendant corresponding to the date and time the thefts occurred. The evidence presented to defendant's jury of thefts actually accomplished by Mr. Wright—together with the telephone calls between Mr. Wright and defendant corresponding to the date and time of the thefts, and defendant's initial denial that he knew Mr. Wright (suggesting a consciousness of

guilt)—was relevant and admissible evidence in support of defendant's conspiracy charge.[5]

Moreover, defendant's assertion to the contrary notwithstanding, there is no basis to conclude the evidence presented to his jury was any different as a result of the mistrial declared as to Mr. Wright. As the trial court explained to the juries before trial, it was anticipated that there would be times when only one of the two juries would be in the courtroom, to hear evidence admissible only as to one or the other of the codefendants; for that reason, the juries were admonished not to speak to one another about the case. Thus, only evidence admissible as to defendant or admissible as to both defendant and Mr. Wright was presented to defendant's jury.[6] The same would have been true regardless of whether or not a mistrial was declared as to Mr. Wright.

Defendant fails to demonstrate any abuse of discretion with respect to the trial court's denial of his request for a mistrial.

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[5] Of course, the prosecution *could have* charged defendant with those thefts he did not personally commit, in addition to the conspiracy, though it exercised its discretion not to do so. (See *People v. Cooks* (1983) 141 Cal.App.3d 224, 312 [" members of a conspiracy are bound by all acts of all members committed in furtherance of the conspiracy"].)

[6] Defendant's argument, asserted for the first time in his reply brief, that the prosecution engaged in "stacking"—introducing cumulative evidence beyond what was necessary to establish the existence of a conspiracy—is more appropriately a basis for a challenge that the court abused its discretion pursuant to Evidence Code section 352, rather than the denial of defendant's request for a mistrial. Defendant did not articulate a separate claim of error with respect to Evidence Code section 352 issues in his opening brief, so any such challenge has been forfeited. (See, e.g., *Habitat & Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1292, fn. 6 ["[a]rguments presented for the first time in an appellant's reply brief are considered waived"].) In any case, however, our review of the record reveals no abuse of discretion in that regard.

C. The Court Properly Allowed Testimony of Police Officer Opining Defendant Was Individual Depicted in Surveillance Video.

Investigator John Rodriguez of the California Highway Patrol testified at trial regarding his investigation of the thefts at issue. Among other things, the prosecutor asked Investigator Rodriguez whether he was able to identify defendant as the male depicted on surveillance video from the storage facility where two vehicles were stolen. Investigator Rodriguez responded "I believe it's him, but I'm not absolutely certain," explaining the basis for his opinion to be "his physical description, his size, his hairline, like the facial structure of the person in the video." He further testified that his opinion that defendant was the person depicted in the video was strengthened by an enhanced version of the video, and by comparing later-obtained photographs of defendant to the video. Defendant contends this testimony should have been excluded because it amounts to impermissible opinion evidence on the ultimate issue of guilt or innocence. We find no abuse of discretion in the trial court's decision to admit the testimony; in the alternative, we find any error harmless.

Lay opinion testimony regarding the identity of a suspect portrayed in a surveillance video or photographs is admissible so long as the witness has personal knowledge of the defendant's appearance and the testimony aids the trier of fact in determining identity. (*People v. Mixon* (1982) 129 Cal.App.3d 118, 128 (*Mixon*); Evid. Code, § 800.) "[T]he degree of knowledge of the subject by the identifier is a matter of weight, not admissibility." *People v. Larkins* (2011) 199 Cal.App.4th 1059, 1067 (*Larkins*) [Fourth Dist., Div. Two].)

We review admission of lay opinion testimony for abuse of discretion. (*Mixon*, *supra*, 129 Cal.App.3d at p. 127.) "It is . . . well settled that the erroneous admission or exclusion of evidence does not require reversal except where the error or errors caused a miscarriage of justice. [Citations.] '[A] "miscarriage of justice" should be declared only when the court, "after an examination of the entire cause, including the evidence," is of the "opinion" that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.' [Citations.]" (*People v. Richardson* (2008) 43 Cal.4th 959, 1001 [citing harmless error standard announced in *People v. Watson* (1956) 46 Cal.2d 818, 836].)

Investigator Rodriguez obtained personal knowledge of defendant's appearance when he arrested him, and when he interviewed him as a suspect in this case, as well as from photographs of defendant obtained from defendant's cell phone. Defendant's assertion to the contrary notwithstanding, it is not true that Investigator Rodriguez "was no more able than the jury to identify Gonzalez as one of the people in the video." The jury had only limited opportunity to observe Mr. Gonzalez, sitting at the defense table at trial, whereas Investigator Rodriguez was able to observe defendant more closely and interact with him, particularly during his interview of defendant. Thus, Investigator Rodriguez would have had a better opportunity than the jury to observe distinguishing characteristics visible in the surveillance video, such as posture, gait, and body movements. (See *Larkins*, *supra*, 199 Cal.App.4th at p. 1067.) We find no abuse of discretion in admitting the challenged testimony.

U.S. v. Calhoun (6th Cir. 1976) 544 F.2d 291, a case that defendant contends should lead us to the opposite conclusion, is not binding on this court, and in any case is distinguishable on its facts. The "main defect" observed by the court in *Calhoun* was that the identifying witness was the defendant's parole officer, so the defense could not explore the relationship on which the identification was founded without revealing to the jury that the defendant was a parolee. (*Id.* at p. 295.) No such defect is present here, where the defense had an unfettered opportunity to cross examine the basis of Investigator Rodriguez's opinion.

Even if we assume the admission of the challenged testimony to be error, we would find the error harmless. The jury was properly instructed that it was the jury's responsibility to decide what the facts were based on the evidence, and that it was free to disregard the opinion of any witness, including Investigator Rodriguez. The jury was shown the surveillance video at issue at trial—and reviewed it again during deliberations—and thereby had an opportunity to evaluate for itself whether it agreed with Investigator Rodriguez's identification of defendant as the person depicted. There is no basis on this record to conclude the jury ignored these instructions and merely deferred to Investigator Rodriguez's opinion. (See *People v. Mickey* (1991) 54 Cal.3d 612, 689, fn. 17 ["The crucial assumption underlying our constitutional system of trial by jury is that jurors generally understand and faithfully follow instructions."].)

Moreover, there was other evidence besides Investigator Rodriguez's identification—and besides whatever information may be gleaned from examination of the video itself—that it was indeed defendant depicted in the video. An acquaintance of

defendant, Shannon Calhoun, identified defendant as the person in the video during an interview with Investigator Rodriguez. She also stated that the female in the video looked like a friend of hers who was dating defendant at the time, and the truck depicted in the video resembled defendant's truck. At trial, Ms. Calhoun recanted her identification of defendant, but conceded that the person on the video resembles defendant in height and build. Additionally, when defendant was shown still photos taken from the video during his interview with Investigator Rodriguez, he did not quite deny that it was him; instead he responded, "Show me where I'm stealing the trailer, though."

In short, we find no reasonable probability that a result more favorable to defendant would have been reached had the testimony of Investigator Rodriguez identifying defendant as the person in the surveillance video been excluded from evidence. As such, any error was harmless.[7]

D. Defendant's Convictions on Counts 19 and 20 Are Supported by Substantial Evidence.

Defendant contends that his convictions on counts 19 and 20 for unauthorized computer access to obtain property are not supported by substantial evidence, so the trial court should have granted his motion for acquittal pursuant to Penal Code section 1118.1 with respect to those charges. The prosecution's theory with respect to these charges was that on two occasions defendant either entered someone else's access code or aided and abetted someone who did to open the computerized gate to the storage area to facilitate

[7] We would reach the same conclusion under the stricter, beyond a reasonable doubt standard articulated in *Chapman v. California* (1967) 386 U.S. 18, 24.

the theft of a vehicle. Defendant argues there was no evidence from which it could be concluded beyond a reasonable doubt that he did so, and speculates that "access to the . . . storage areas might have been effected by other stealth means or breaking and entering." Defendant is incorrect.

We review the denial of a motion for acquittal pursuant to Penal Code section 1118.1 under the substantial evidence standard. (*People v. Cole* (2004) 33 Cal.4th 1158, 1213 [appellate court reviews sufficiency of the evidence as it stood at the time of the Penal Code § 1118.1 motion].) Under this standard, we review the record in the light most favorable to the judgment to determine whether it discloses evidence that is reasonable, credible, and of solid value such that a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. (*People v. Story* (2009) 45 Cal.4th 1282, 1296.)

Defendant's assertion to the contrary notwithstanding, the record does disclose substantial evidence of defendant's guilt. As discussed above, a person resembling defendant was captured on surveillance video entering a storage facility on two separate occasions, coinciding with two vehicle thefts. The trial court found there to be sufficient evidence that person was defendant for purposes of the motion for acquittal, and defendant has not disputed that finding on appeal. The trial court observed that the video does not show any "fidgeting" with the keypad, which might have suggested the gate was forced or hotwired; rather, it appears a keypad was used to enter an access code to open the gate, either by defendant or someone in his presence. An employee of the storage facility testified regarding the nature of the computer system controlled via the keypad,

and confirmed that an access code not registered to defendant was used on each occasion. Based on this evidence, a reasonable trier of fact could find beyond a reasonable doubt that defendant knowingly accessed the computer system controlling the gate, and used that system to open the gate so he could wrongfully obtain property, or aided and abetted someone who did.[8] (See *People v. Tillotson* (2007) 157 Cal.App.4th 517, 538 [discussing elements of violation of Penal Code section 502, subd. (c)(1)].)

Because substantial evidence supported defendant's convictions on counts 19 and 20, his motion for acquittal was properly denied.

E. Conceded Sentencing Issues

Defendant and the People agree that defendant's sentences with respect to counts 19 and 20 for unauthorized computer access should have been stayed pursuant to Penal Code section 654, and that stayed sentences imposed with respect to two of defendant's prison priors should have instead been stricken. We agree.

First, Penal Code section 654 prohibits multiple punishment for a single act or an indivisible course of conduct. (Pen. Code, § 654, subd. (a); *People v. Deloza* (1998) 18 Cal.4th 585, 591 (*Deloza*).) If a defendant suffers two convictions, punishment for one of which is barred by Penal Code section 654, the sentence for one conviction must be imposed, and the other imposed and then stayed. (*Deloza*, *supra*, at p. 592.) Here, the offenses charged in counts 19 and 20 were part of the same indivisible course of conduct charged in counts 5 and 7: the unauthorized computer access—entering a code to open

[8] The jury was instructed with respect to aider and abettor liability.

the gate to a storage facility—was the means of accomplishing the vehicle thefts. The parties agree there is no indication that defendant harbored separate though simultaneous objectives in committing the statutory violations, so as to justify multiple punishment. (Cf. *People v. Britt* (2004) 32 Cal.4th 944, 952.) Our review of the record reveals no basis to conclude otherwise. As such, the court erred by failing to stay the punishments for counts 19 and 20.

Second, with respect to defendant's prison priors, the trial court was required to either impose the enhancement mandated by Penal Code section 667.5, subdivision (b), or strike the alleged prior. (*People v. Langston* (2004) 33 Cal.4th 1237, 1241 [enhancement under Pen. Code, § 667.5, subd. (b) "is mandatory unless stricken"].) As noted above, the trial court indicated its intention not to impose any additional punishment for two of defendant's prison priors. The judgment will therefore be amended to reflect the trial court's manifest intention, while still comporting with the rule articulated in *Langston*, by striking the two enhancements pursuant to Penal Code section 667.5, subdivision (b), for which the trial court erroneously imposed stayed sentences.

F. Defendant Is Not Entitled to Any Additional Presentence Custody Credits.

Defendant has withdrawn the arguments raised in his opening brief regarding presentence custody credits. He contends in his reply brief, however, that he is entitled to additional days of presentence custody credit, not factored in by the trial court, on the basis of time spent in custody for a crime committed in Orange County while on bond following his arrest in the present case. Not so.

Penal Code section 2900.5 provides that presentence custody credit "shall be given only where the custody to be credited is attributable to proceedings related to the same conduct for which the defendant has been convicted." (Pen. Code, § 2900.5, subd. (b).) Defendant is not entitled to any presentence custody credit with respect to his sentence in the present case for any time spent in custody attributable to separate proceedings in Orange County based on unrelated conduct. We find no error in the trial court's calculation of defendant's presentence custody credits.

III. DISPOSITION

The judgment is modified such that the sentences on counts 19 and 20 shall be stayed pursuant to Penal Code section 654. The judgment is also modified to strike the two enhancements pursuant to Penal Code section 667.5, subdivision (b), for which the trial court previously imposed stayed sentences. The trial court is directed to prepare an amended minute order and abstract of judgment reflecting these modifications. The trial court is further directed to forward copies of the amended minute order and abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

HOLLENHORST
Acting P. J.

We concur:

KING
J.

MILLER
J.